

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 27, 2008

STATE OF TENNESSEE v. RACHEL MICHELLE LANGLEY

**Direct Appeal from the Circuit Court for Blount County
No. C-16050 Jon Kerry Blackwood, Judge**

No. E2007-01343-CCA-R3-CD - Filed March 18, 2008

The Defendant, Rachel Michelle Langley, pled guilty to identity theft and received a two-year sentence to be served on probation. Less than five months after her guilty plea, a probation violation warrant was issued alleging various violations. After a hearing, the trial court revoked the Defendant's probation and ordered that she serve her sentence in jail. The Defendant appeals this judgment. Upon a thorough review of the record and applicable law, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Mack Garner (at hearing), Maryville, Tennessee, and J. Liddell Kirk (on appeal), Knoxville, Tennessee, for the Appellant, Rachel Michelle Langley.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Preston Shipp, Assistant Attorney General; Mike Flynn, District Attorney General; Robert Headrick, Assistant District Attorney General, for the Appellee, the State of Tennessee.

OPINION

I. Facts

The trial court heard the following evidence at the probation revocation hearing: Carolyn Brewer, the Defendant's supervisor with the Board of Probation and Parole, testified that the Defendant initially reported to her on August 15, 2006. On that date, they discussed the requirements of her probation, and she was drug tested. The initial tests revealed cocaine, marijuana, and opiate use. At the next meeting, on September 13, 2006, the Defendant informed Brewer that she had not sought the treatment for which she was referred. The Defendant told Brewer that she did not recall much about the August meeting because she had taken a Xanax just before the

meeting. The Defendant additionally told Brewer that she had used opiates and marijuana since their first meeting. Brewer gave the Defendant another opportunity to seek treatment, and the Defendant entered the Agape Halfway House on October 2, 2006.

On December 3, 2006, the counselors at the halfway house informed Brewer that the Defendant left against their wishes. Brewer testified that she then sought a warrant against the Defendant for leaving treatment without permission and for not contacting Brewer when she left the facility. Eventually, the Defendant called Brewer, leaving a message and phone number. When Brewer called the number, the person who answered the phone did not know the Defendant. On December 12, 2006, the Defendant contacted Brewer and explained that she was working, taking care of her children, and she wished to continue on probation. Brewer advised the Defendant that she should come into the office, which the Defendant never did. They again spoke on January 3, 2007, because the Defendant wished to know why there was a warrant out for her arrest. The Defendant eventually turned herself in to the police.

The Defendant was released on bond on May 15, 2007, and she was drug tested on May 18 and June 7, 2007. Both of those tests were negative. The Defendant was also drug tested the day of the hearing, June 19, 2007, and initial results yielded a positive test for opiates.

The Defendant testified that she was a single mother with an eight year old child and a ten year old child. She worked at McDonald's and did not receive any child support. She pled guilty on her initial conviction because she took a co-worker's credit card to support her eight-year drug problem. She testified that she did not finish the Agape program because of a "small incident." The Defendant denied taking any opiates before the hearing, but she stated she did take Tramadol for a toothache the week before the hearing. The Defendant stated that Brewer scheduled for her an appointment on January 3, 2007, and, on January 2, the police arrived at her house with a warrant. The Defendant maintained she was merely trying to raise her children and work honestly. The Defendant testified she eventually turned herself in because she could not "live on the run." She maintained she was doing well at McDonald's, and she would not be opposed to further drug treatment.

On cross-examination, the Defendant stated that the misunderstanding at Agape was over phone privileges. She stated that the counselors allowed her to talk on the phone for only ten minutes, and she talked with her children for twelve. Additionally, the Defendant admitted she forged a note to Brewer concerning her employment.

The court revoked probation "based on the failed drug screen and numerous violations and instances of dishonesty with [the Defendant's] probation officer."

II. Analysis

On appeal, the Defendant claims that the trial court erred in revoking her probation and

ordering incarceration. When a trial court determines by a preponderance of the evidence that a probationer has violated the conditions of his or her probation, the trial court has the authority to revoke probation. T.C.A. § 40-35-311(e) (2006). Upon finding that the defendant has violated the conditions of probation, the trial court may revoke the probation and either: (1) order incarceration; (2) order the original probationary period to commence anew; or (3) extend the remaining probationary period for up to two additional years. *State v. Hunter*, 1 S.W.3d 643, 644 (Tenn. 1999); see T.C.A. §§ 40-35-308, 310, 311 (2006). The defendant has the right to appeal the revocation of his probation and entry of his original sentence. T.C.A. § 40-35-311(e). Upon a finding of a violation, the trial court is vested with the statutory authority to “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered” *Id.*; accord *Hunter*, 1 S.W.3d at 646 (holding that the trial court retains the discretionary authority to order the defendant to serve his or her original sentence in confinement). Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension” T.C.A. § 40-35-310.

Relative to when a trial court may revoke probation and to the standard of review in an appeal of such an action, our Supreme Court has stated:

We take note that a trial judge may revoke a sentence of probation or a suspended sentence upon a finding that the defendant has violated the conditions of his probation or suspended sentence by a preponderance of the evidence. T.C.A. § 40-35-311. The judgment of the trial court in this regard will not be disturbed on appeal unless it appears that there has been an abuse of discretion. *State v. Williamson*, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981). In order for a reviewing court to be warranted in finding an abuse of discretion in a probation revocation case, it must be established that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred. *State v. Gear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment. *State v. Milton*, 673 S.W.2d 555, 557 (Tenn. Crim. App. 1984).

State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

Pertinent to this case, the Defendant’s probation order required of her the following: (1) that she shall conduct herself as an upright and law abiding citizen; (2) that she not violate the laws of the State of Tennessee; (3) that she not use intoxicating drugs; and (4) she shall report to her probation officer as the probation officer directs. Based on the testimony of Brewer and the Defendant, the trial court determined that the Defendant did not report to her probation officer as she was directed after she left the halfway house, and she admitted using intoxicating drugs. The Defendant additionally tested positive for opiates the day of the hearing. These things are all in violation of the probation order. The record contains substantial evidence to support the trial court’s

determination that the Defendant violated the terms of her probation. The trial court did not abuse its discretion in making this determination; therefore, the Defendant is not entitled to relief.

III. Conclusion

The Defendant has not proven the trial court abused its discretion in determining that the Defendant violated the probation order. As such, we affirm the judgment of the trial court.

ROBERT W. WEDEMEYER, JUDGE